

Economic and European Law



Gide Loyrette Nouel

Presentation of the Firm

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Founded in Paris in 1920, Gide Loyrette Nouel is one of the leading international law firms with more than 700 lawyers, including 106 partners, drawn from over 30 different nationalities. Operating out of 21 offices, the Firm offers some of the most respected specialists in each of the various sectors of national and international finance and business law.

An International Dimension

With its strong international presence, the Firm is able to serve the needs of its clients all over the world.

In each of its offices in Europe, Asia, North America, Africa and the Middle East, Gide Loyrette Nouel puts its comprehensive knowledge of local markets, its regional expertise and the resources of an international law firm to the service of its clients. Gide Loyrette Nouel is also able to offer its clients advice and assistance in Africa through its network of associated firms, Gide Africa.

Gide Loyrette Nouel also works in close co-operation with leading law firms in the countries where it does not have offices and is a member of several international legal networks.

Recent Awards

The Firm has been named:

- “**French Law Firm of the Year**” by Chambers Europe in May 2008
Chambers Global in November 2006;
- “**Client Choice for France**” by International Law Office in 2006;

* at 01/01/2008

- “**French Law Firm of the Year**” by IFLR;
- “**France's Legal Firm of the Year**” by Who’ Who.

Departments

Gide Loyrette Nouel has a departmental structure covering all the main branches of business law:

- Arbitration
- Bankruptcy and Insolvency
- Criminal and Commercial Litigation
- **Economic and European Law**
- Employment
- Finance and Project Finance
- Intellectual Property, Technology & Electronic Communications
- Mergers, Acquisitions and Corporate Law
- Public Law
Environmental Law
- Real Estate Transactions and Financing
- Tax
- Transportation, Aviation, Maritime and Insurance Law

and has formed cross-disciplinary teams for the following specialisations:

- Banking and Financial Litigation
- Compliance - Risk Management
- Employee Savings
- Energy
- Health Law
- International Investment Protection
- Public-Private Partnerships
- Sports Law

The Economic and European Law Department

The Economic and European Law Department of Gide Loyrette Nouel was created nearly 35 years ago when French and European competition law first came into existence. In 1967, Gide Loyrette Nouel was the first French law firm to open an office in Brussels.

Now that more than half the legislation applicable in France derives from Community legal instruments, the Department offers the services of some 30 lawyers in Paris and works in close co-operation with the Firm's Brussels office manned by 20 lawyers. Gide Loyrette Nouel therefore has a team of nearly 50 lawyers of more than 10 nationalities whose expertise spans all the areas of French and Community economic law.

The Department and the Brussels Office have trained lawyers specialising in competition law who have been operating out of each of the Firm's offices in Central and Eastern Europe, including Warsaw, Budapest, Prague, Bucharest, Belgrade, Moscow, Kyiv and Istanbul, since before the accession of Poland, Hungary and the Czech Republic to the European Union on 1 May 2004.

In countries where the Firm does not have its own offices, it has long-standing working relationships with law firms selected for their expertise in competition and distribution law.

Due consideration of economic law issues has become central to the life of the business community. Not only does it have an important role to play in external expansion transactions in terms of economic concentration notification procedures according to French and Community thresholds but also in the structuring of distribution networks, relationships with customers, suppliers and competitors and the application of consumer protection rules.

It is also the Department's ambition to perfect its grasp of the global economy affecting its clients' businesses. To this end, it has formed specialist legal teams to assist German companies, airlines, pharmaceutical and cosmetics companies, motor vehicle distributors, and energy, agriculture and food sector undertakings (in association with the Brussels Office).

In addition to their competition and distribution law expertise, these teams of lawyers offer an in-depth knowledge of the particularities of these businesses and the specific regulations applicable in these sectors.

The Department's lawyers provide expert legal advice and handle litigation before the French and Community courts. They also assist with competition and distribution law issues arising in matters entrusted to other practice group's within the Firm, such as distribution network due diligence, notifying concentrations arising as a result of corporate acquisition and restructuring transactions and arbitration proceedings.

The Economic and European Law Department's Areas of Expertise

The Economic and European Law Department's principal areas of expertise are competition, distribution and consumer protection.

Competition

Freedom of trade and its natural consequence, free competition, provide a source of corporate opportunities. Competition law rules now play a central role in corporate commercial policy and growth strategies. Although competition law opens the way to opportunity, it also introduces a risk factor and a degree of legal uncertainty which companies need to anticipate and address at an early stage.

- **Antitrust**

Antitrust encompasses a wide pallet of anti-competitive practices, conduct and situations which nowadays form a central focus of concern for the national and Community competition authorities.

With the abolition of the prior notification system and the adoption, at Community level, of a legal exception system similar to that used in France, companies are now required to analyse their own agreements and conduct in the market to identify areas of legal risk.

The Department assists companies to prepare and/or analyse their vertical agreements and the various forms of horizontal co-operation agreements (specialisation agreements, research and development agreements, purchase or marketing agreements between competitors, standardisation agreements, environmental agreements, etc.).

The Department also advises market leaders about the specific constraints that may give rise to situations of market dominance triggering the application of the rules prohibiting abuse of a dominant position or a situation of economic dependency.

In addition to their legal advisory role, members of the Department also regularly represent clients before the competition authorities, and the French and Community courts.

This litigation practice includes representing complainants in direct referrals to the European Commission or French Competition Council, bringing lawsuits for damages before the judicial courts or defending undertakings accused of anti-competitive conduct before the competition authorities.

In the latter case, the Department assists clients at all stages of the procedure, from searches and seizures operated by the European Commission or the DGCCRF⁽¹⁾ to proceedings before the Court of Justice in Luxembourg or the French courts.

In the event of a so-called “dawn raid”, the Department is able to mobilise sizeable teams of specialists in Brussels, its other European offices and throughout the European Union via its vast network of foreign legal contacts.

Finally, the Department has already had occasion to use the “leniency” and “no-challenge” procedures with respect to complaints made under French and Community law.

- **Merger Control**

The Department is regularly instructed in relation to corporate mergers and the setting up of joint venture companies, both listed and unlisted, to apply for the approval of the relevant competition authorities.

The Department has an in-depth knowledge of the various analytical tests applied by the regulatory authorities: test whether a concentration creates or strengthens a dominant position (analysis of coordinated or uncoordinated effects), related or complementary market portfolio effects analysis, significant reduction in competition test, unilateral effects test, etc.

⁽¹⁾ French General Directorate for Competition, Consumer Protection and the Prevention of Fraud

The Department advises companies at the transaction structuring stage to assist them identify the type of transaction they are planning (concentration, full-function joint venture company, joint venture company engaging or not engaging in coordinated conduct requiring specific additional analysis) and to coordinate their notification, acquisition and, if relevant, stock exchange timetable.

This assistance early on in the transaction, makes it possible to conduct a preliminary competition review, especially of sensitive or complex transactions, to identify areas of risk and any divestments or undertakings that may be required, firstly, to obtain a favourable Phase I decision and/or secondly, to recommend and prepare any portage mechanisms that may be required from a bank.

The Department assists companies at all stages of the notification procedure: establishing informal contact with the parties generally involved in the procedure, pre-notification, formal notification, analysis of the transaction at Phase I and Phase II (representation before the Competition Council in France) and, if required, organisation and defence of the interests of the notifying parties if the decision is challenged on appeal.

In addition to the teams based in Brussels and Paris handling notification procedures before the European Commission or the French Ministry of the Economy, the Department is able to organise multiple notification procedures through the support of the Firm's international offices and its network of regular legal contacts.

The Department regularly acts for interested third parties (competitors or companies operating in upstream or downstream markets, trade federations, professional associations, etc.) applying to the regulatory authorities to order the notifying parties to divest themselves of certain interests and/or give undertakings to safeguard free competition, or even to prohibit the merger transaction entirely.

The Department also has experience in handling proceedings for the appointment of trustees with instructions to verify compliance with undertakings given to the regulatory authorities.

In these circumstances, the Department acts either for the companies themselves or in the interests of the trustee.

- **European State Aid Control**

The Department, in association with the Brussels Office, works with governments granting aid or companies benefiting from State aid in proceedings before the European Commission.

The Department also acts for complainants in their applications to the European Commission for it to prevent the payment of unlawful aid.

The Department has acquired an in-depth knowledge of the various State aid schemes, including aid to failing companies, aid to the motor vehicle industry and regional aid.

- **Public Monopolies / Deregulation**

In association with the Brussels Office, the Department has built up expertise in restructuring or converting monopolies and opening up public enterprises to competition.

The Department regularly acts for companies operating in markets recently opened up to competition, such as the energy and telecommunications sectors.

The Department has a good knowledge of the problems involved in gaining access to infrastructure, entering into gas or electricity supply agreements with “eligible customers” and the rules governing the conduct of the existing undertakings operating in these sectors.

Distribution

• Distribution Networks

The Department has developed specific expertise in structuring, setting up and monitoring the operation of various forms of integrated distribution networks, including franchise networks and exclusive and/or selective distribution networks in various sectors of the economy: motor vehicles, perfumes, sport, over-the-counter pharmaceuticals, clothing, luxury goods, etc.

The Department handles the drafting of distribution agreements and resale outlet selection grids, and any disputes which may arise between network principals and their resale outlets, including non-renewal of agreements or failure to comply with network rules such as a prohibition against selling outside the network.

The Department also has a good knowledge of how commercial agency agreements operate and the handling of disputes at the end of an agreement regarding compensation for the customer good will built up by the agent.

• Relationship Transparency

This issue is particularly sensitive because of the distribution structure in France. Periodic reforms have been introduced to try to alter the conduct of those involved in distribution.

The Department has long-standing experience in this area. It regularly advises goods and service suppliers, and resale outlets on the drafting of their general terms and conditions of sale, commercial co-operation agreements and general terms and conditions of purchase.

The Department also advises on the grant of price discounts and/or the remuneration paid for commercial co-operation, dealing especially with the issues of invoicing or resale at a loss.

It assists clients in cases involving the listing and delisting of goods by central purchasing organisations, especially instances where established commercial relationships are terminated and, if required, represents them before the courts.

The Department has an in-depth knowledge of handling disputes brought about by discriminatory conduct or the abuse of situations of economic dependence based on purchasing or selling power.

• Unfair Competition

Unfair competition draws a boundary for free competition and offers a means of punishing tortious behaviour which is not only unlawful but contrary to business customs and practice.

The Department has extensive experience of unfair competition disputes, especially those which involve the disruption of a competitor's business (poaching employees and enticing away customers), breach of non-competition clauses, the denigration of other businesses or "free-riding" (taking undue advantage of the marketing efforts and investments of another company).

Consumer Law

• Consumer Law and the Rules Protecting Consumer Rights

The Department has developed an in-depth knowledge of the consumer protection rules. Its experience relates largely to disputes involving unfair contract terms and the "essential characteristics" of goods.

The Department regularly acts for companies in the food and pharmaceutical industries launching regulated goods on the market, advising them on the rules governing dangerous or defective goods, and the rules on labelling.

The Department also assists clients with all issues relating to the composition, market launch and market withdrawal of mass retail products. It has developed specific experience in the large-scale recall of defective products in consultation with the DGCCRF and the European Commission.

- **Advertising and Sales Promotion Law**

With the competition between businesses continuing to intensify, sales promotion strategies are becoming increasingly aggressive and take on a wide variety of forms via a multitude of different media.

The Department has extensive and longstanding experience in sales promotions. It handles all issues relating to:

- advertising via all types of media, with a special knowledge of tobacco and alcohol advertising, subject to specific legal constraints (misleading advertising and unfair comparisons via the television, radio or the Internet, etc.);
- sales methods and promotional campaigns (sales with bonus goods, competitions, lotteries, tied or coupled sales, etc.);
- pricing practices (clearance sales, loss sales, price discounts and price labelling, etc.);

- compliance with other provisions of the Consumer Code (distance sales, deception and fraud, etc.),
- investigations by the DGCCRF, from their commencement to an eventual hearing before the courts.

Compliance - Risk Management

The Department advises its clients on establishing “Compliance / Risk Management” programs tailored to their individual requirements. This process commences with the carrying out of a complete audit of the structural links, and the commercial and contractual practices employed, in the light of the competition, distribution and consumer protection rules. Following these due diligence audits, recommendations are made as to how agreements should be revised, pricing practices altered and companies dismantled and/or reorganised.

The process concludes with an audit to verify that all the recommendations have been properly implemented and, if necessary, staff training courses for employees in contact with customers, suppliers, competitors and government authorities.

Specialist Legal Teams

Specialist legal teams have also been formed in the following fields within the Department.

- **Air Law**

The Department advises on domestic and international air law, including issues relating to the operation of aircraft (sales, purchases, leasing, financing, insurance, security interests), regulations governing air use, ground handling services and the management of airports and airport facilities.

- **Agriculture**

The Department, in close collaboration with the Brussels Office, assists agricultural produce exporters eligible for export refunds in their disputes with the customs services and refund payment organisations. It acts at the pre-litigation stage and, where required, represents clients before the administrative or criminal courts.

- **Germany**

The Department has formed a team of Franco-German lawyers in Paris, Brussels and in the Central and Eastern European offices, which advises French and German investors on their various projects, particularly in the fields of distribution, trade, industrial risk and acquisitions. This team also has litigation expertise.

- **Customs**

The Department offers advice and assistance covering all areas of customs law. In particular, it verifies the conformity of the customs procedures followed by its clients with Community regulations before any dispute has arisen.

It also handles customs disputes concerning goods in transit, customs tariff classifications, customs value, the origin of imported goods, exchange control, matters relating to the tax responsibilities of the customs services (VAT on imports, excise duty on tobacco, alcohol and petroleum products) and environmental taxation (General Tax on Polluting Activities).

- **Energy**

The Department, in association with other departments of the Firm, offers advice to all parties involved in the gas, electricity and renewable energy sectors.

It assists with regulatory issues, energy network access and the negotiation and conclusion of supply agreements.

It also advises operators and investors in setting up or purchasing wind energy parks (legal review of the government licences and agreements needed under energy and town planning law, preparing facility construction agreements, creating or selling development companies).

- **Health**

The Department, in close co-operation with other departments of the Firm, advises and defends health sector undertakings (pharmaceutical manufacturers, health businesses and public or private health institutions) in the following areas: national and Community clinical trial regulations, distribution and commercial terms and conditions applicable to pharmaceutical products, relationships between pharmaceutical manufacturers, distributing wholesalers and pharmacies, competition and merger control regulations, pharmaceutical and cosmetic product advertising law, product promotions, the Anti-Gift Act⁽²⁾, labelling rules, etc.

⁽²⁾ Legislation preventing, for example, the representatives of pharmaceutical companies offering gifts to medical practitioners as incentives for using their products.

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